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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,796	06/14/2007	Alberto Cristina	5868	6458
26936	7590	06/22/2009		
SHOEMAKER AND MATTARE, LTD			EXAMINER	
10 POST OFFICE ROAD - SUITE 100			JONAITIS, JUSTIN M	
SILVER SPRING, MD 20910				
			ART UNIT	PAPER NUMBER
			3752	
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			06/22/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/597,796	CRISTINA, ALBERTO	
	<b>Examiner</b>	<b>Art Unit</b>	
	JUSTIN JONAITIS	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 August 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/12/2007</u> .  | 6) <input type="checkbox"/> Other: ____ .                         |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dispensing and distribution plates in an assembled configuration have a decreasing axial thickness between the center portion and the peripheral portion relative to the radial direction must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 recites the limitation "closing ring" in the first line. There is insufficient antecedent basis for this limitation in the claim. Specifically, Closing ring is not mentioned in the previous claims which claim 5 depends on.

4. Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically it's unclear what is meant by "a closing ring is mounted" at the end of the sentence. For examination purposes, examiner assumes the amendment was supposed to remove that portion of the claim, and therefore that portion of the claim won't be included in examination.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-7, 9, 11, 13-16, & 18-19 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #6,641,057 to Thomas et al.

In re claim 1, Thomas et al. discloses a Shower head comprising a dispensing plate (lower shell portion (48) provided with at least one hole for dispensing water, a closing plate (upper shell (44)), in fluid communication with a water outlet, wherein the plates directly face each other relative to an axial direction and the shower head comprises a seal (seal/flange (214)) directly arranged and pinched in compression between the dispensing and closing plates, so to

sealingly delimit with the plates a collection chamber (distribution channel (222)) in order to dispense the fluid through the holes of the dispensing plate.

In re claim 4, Thomas et al. discloses the invention as described above including the dispensing and distribution plates, in an assembled configuration defining a collecting chamber having a decreasing axial thickness between a central portion and a peripheral portion relative to a radial direction.

In re claim 5, Thomas et al. discloses the invention as described above including a closing ring (connector ring (102)) being substantially stiff (made from the same material as the rigid cosmetic covers) in the axial direction to form an end of stroke as the plates approach one another during the assembly step of the shower head and so as to ensure a minimum thickness of the collecting chamber for the water flow towards the dispensing holes.

In re claim 6 & 7, Thomas et al. discloses the invention as described above including the nozzles being suitable to for partly inserting into the holes of the dispensing plate, where the nozzles have a dispensing portion (lower portion (202)) projecting from the dispensing plate and a stopping portion (seal/flange (214)) suitable for forming a stop during the introduction of the nozzles in the relevant holes.

In re claims 9, & 11, Thomas et al. discloses the invention as described above including the seal being made integral with a membrane which is provided with nozzles (seal/flange of nozzles interconnects the nozzles making the membrane disclosed by applicant), where the closing ring is mounted coaxially to the seal.

In re claim 13, Thomas et al. discloses the invention as described above including the seal being made of a silicone rubber. [column 9, lines 17-21]

In re claims 14-16, Thomas et al. discloses the invention as described above including the dispensing and distribution plates being held together in compression by screw connecting means the screw connecting means comprising a screw passing through connecting holes in the plates and provided with a head abutting one of the plates (distribution plate), the screw being locked on an end opposite to the head on the other side of the other plate by a nut (built integral to closing plate), where the screw connecting means are arranged on a peripheral portion of the plates radially external to the collecting chamber. [See Thomas et al. Figure 16]

In re claim 18, Thomas et al. discloses the invention as described above including the dispensing and distribution plates, at faces directly facing each other are substantially planar (See Thomas et al. Figure 16, Planar section defined at area which fits into groove (103)).

In re claim 19, Thomas et al. discloses the invention as described above including the dispensing and distributing plates, at faces directly facing each other are concave or convex (rounded shells (44) and (48) are concave/convex faces directly facing each other, See Figure 1).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3752

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-3, 8, 10, 12 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,641,057 to Thomas et al.

In re claims 2, 8, 10, and 12 Thomas et al. discloses the invention as described above including a closing ring (connector ring (102)) arranged between the dispensing and distribution plates, the closing ring being arranged coaxially to the seal.

However, Thomas et al. fails to disclose the specific thickness of the components relative to each other.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to chose the desirable dimensions of components, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In re claims 3 and 17, Thomas et al. discloses the invention as described above including the closing ring being shaped complementary relative to the seal, but fails to disclose the seal in a deformed configuration expanding radially in contact with an internal wall of the closing ring

which faces toward the collecting chamber and the closing ring having fixing holes which the screw connecting means pass through to lock the closing ring into position relative to the plates. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to position the screws further radially outward so as to pass through the closing ring, as well as position the seal so when deformed it touches the inner wall of the closing ring because Applicant has not disclosed that the closing ring being in contact with the seal and being locked in place by the screws provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, the invention disclosed by Thomas et al. performs equally well by providing a water tight connection between the dispensing and distribution plates while using the groove (103) in the connector ring functions to keep the connector ring positioned relative to the dispensing and distribution plates.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent #6,250,572 to Chen discloses a showerhead having similar structure and components. U.S. Patent #6,227,696 to Duchnowski et al. discloses a diffuser with similar structural components. U.S. Design Patent #D528,631 to Gillette et al. discloses a pan shower head with similar structure. U.S. Patent #7,143,897 to Guzman et al. discloses a shower head with similar structure and components. U.S. PG-Pub 2005/0284967 to Korb et al. discloses a shower head with similar structure and components. U.S. Patent #6,382,531 to Tracy discloses a shower head with similar structure and components.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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